



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 27, 1994

Mr. Michael J. Cosentino
Acting City Attorney
114 West 7th Street
P.O. Box 1088
Austin, Texas 78767-8828

OR94-700

Dear Mr. Cosentino:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, Government Code chapter 552. We assigned your request ID# 28209.

The City of Austin (the "city") has received a request for certain information submitted in response to a contract awarded for telephone services for the city fire department. Specifically, the requestor seeks "the equipment itemization submitted by Southwestern Bell Telephone Company in reference to the bid numbered VC94300019 in behalf of the City of Austin's, Fire Department, Training Center for a Digital Hybrid Private Branch Exchange Telephone System." You have submitted the requested information to us for review and ask whether section 552.110 of the Government Code excepts it from required public disclosure.

Pursuant to section 552.305 of the Government Code, we have notified the parties whose proprietary interests are implicated by this request. We have received a response only from Southwestern Bell Telecommunications, Inc. ("SBT"). SBT claims that section 552.110 of the Government Code excepts the requested information from required public disclosure.

Section 552.110 protects the property interests of private persons by excepting from required public disclosure two types of information: (1) trade secrets, and (2) commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision. SBT claims that the requested information constitutes trade secrets.

The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763, 776 (Tex.), *cert. denied*, 358 U.S. 898 (1958); *see also* Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. *It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management. [Emphasis added.]*

RESTATEMENT OF TORTS § 757 cmt. b (1939). If a governmental body takes no position with regard to the application of the "trade secrets" branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case for exception and no one submits an argument that rebuts the claim as a matter of law. Open Records Decision No. 552 at 5.¹

We have examined the arguments submitted to us for review. We conclude that SBT has made a *prima facie* case that the requested information constitutes trade secrets. *See, e.g.*, Open Records Decision No. 541 (1990) (concluding that section 552.110 protects railroad companies' base rates, rate adjustment provisions, and service features).

¹The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are


- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); *see also* Open Records Decision Nos. 319 at 2, 306 at 2 (1982); 255 (1980) at 2.

Accordingly, we conclude that the city must withhold the requested information under section 552.110 of the Government Code.²

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Government Section

LRD/GCK/rho

Ref.: ID# 28209

Enclosures: Submitted documents

cc: Mr. Charles Clack
Account Representative
Comtex
5555 North Lamar, Suite E-109
Austin, Texas 78751
(w/o enclosures)

Mr. Dan T. Foley
Vice President
General Attorney & Secretary
Southwestern Bell
1651 N. Collins Boulevard
Richardson, Texas 75080
(w/o enclosures)

²We limit our ruling here to the "equipment itemization" information that was specifically requested. We do not address in this ruling whether the remaining information submitted for our review constitutes trade secret information.